

**Staff
Summary
Report**



**To: Mayor & City Council
Through: City Manager**

**Agenda Item Number
Meeting Date 08/05/02**

SUBJECT: AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN B&B HOLDINGS, INC. AND THE CITY OF TEMPE AND DECLARING THE EXISTENCE OF AN EMERGENCY.

PREPARED BY: Steve L. Nielsen, Community Design and Development Director (350-8294)

REVIEWED BY: Patrick Flynn, Deputy City Manager (350-8399)
C. Brad Woodford, City Attorney (350-8229)

BRIEF: An ordinance authorizing the Mayor to execute a Memorandum of Understanding between B&B Holdings, Inc. and the City of Tempe for the purposes of assigning obligations and responsibilities relating to a multi-purpose facility and declaring the existence of an emergency.

COMMENTS: **STADIUM (0902-32) ORDINANCE NO. 2002.37.** An ordinance authorizing the Mayor to execute a Memorandum of Understanding between B&B Holdings, Inc. and the City of Tempe outlining the obligations and responsibilities of the parties as it relates to the selection and construction of a multi-purpose stadium facility within the Emerald Center site in Tempe, Arizona. This Memorandum of Understanding is contingent upon various agreements entered into with the Tourism and Sports Authority; and declaring the existence of an emergency.

Document Name: (20020805devsn01) Supporting Documents: Yes

SUMMARY: On July 29, 2002, the Council reviewed site concept plans and financial feasibility for the location of a multi-purpose stadium facility at the Emerald Center site in Tempe, Arizona. This site is approximately 98 acres in size and is located between Priest Drive and Interstate 10, south side of Warner Road.

The attached summary document outlines the basic components of the agreement along with associated costs and responsibilities.

FISCAL NOTE: The required Host City infrastructure in the amount of \$25.8 million dollars will be repaid in the first position from the "Pool of Stadium Generated Revenue". As additional debt service security, the Cardinals will provide \$1 million dollars in order to seed a Bond Security Account.

RECOMMENDATION: Authorize the Mayor to execute the Memorandum of Understanding between B&B Holdings, Inc. and the City of Tempe relating to a multi-purpose facility at the Emerald Center site. This Memorandum of Understanding is contingent upon various agreements to be entered into with the Tourism and Sports Authority.

ORDINANCE NO. 2002.37

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN B&B HOLDINGS, INC. AND THE CITY OF TEMPE WHICH WILL PROVIDE CERTAIN PUBLIC BENEFITS TO B&B HOLDINGS, INC. AND ENABLE THE CITY OF TEMPE TO RETAIN THE FACILITY LOCATION FOR THE NFL CARDINAL FOOTBALL TEAM AND THE FIESTA BOWL WITHIN THE CITY OF TEMPE AND TO ATTRACT FUTURE SUPER BOWLS AND OTHER ACTIVITIES AND EVENTS TO THE FACILITY; AND DECLARING THE EXISTENCE OF AN EMERGENCY.

WHEREAS, Tourism and Sports Authority ("TSA") is considering locating a multi-purpose facility to accommodate professional football and other civic, cultural, and scoring events ("Facility") at the Emerald Center, which is located within Tempe's municipal boundaries; and

WHEREAS, Tempe desires to have the Facility located within its boundaries in order to retain the Cardinals and Fiesta Bowl, as well as attract future Super Bowls and other activities and events to the Facility; and

WHEREAS, time is of the essence in that House Bill 2177 passed by the Arizona Legislature requires agreements to be reached on or before September 12, 2002.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That the Mayor is authorized to enter into the Tempe/Cardinals Memorandum of Understanding as set forth in the attached document.

Section 2. That the Mayor is authorized to execute an amendment to the existing lease on the Cardinals Training Facility located at the intersection of Hardy and Warner Roads in the City of Tempe, extending the term of the lease to coincide with the terms of the Cardinals/TSA Use Agreement (approximately 30 years).

Section 3. **Emergency.** The immediate operation of the provisions of this Ordinance is necessary to meet a public emergency affecting life, health, property or the public peace. Time is of the essence in that: House Bill 2177 passed by the Arizona Legislature requires the TSA to identify its primary site, finalize documentation for the conveyance of land to the TSA and submit such documents to the Governor and Attorney General by September 12, 2002; the Maricopa County Elections Department will be required to make large expenditures toward the preparation of an election publicity pamphlet if such site documents are not submitted prior to

September 1, 2002; the only viable site for the multipurpose facility identified by City Staff is the parcel of land identified in this Ordinance and MOU; the parcel of land is the subject of pending contractual arrangements for development and the property owner has offered the land to the City for its site proposal subject to certain time conditions; City Staff and TSA officials require time for due diligence and site analysis; construction of infrastructure improvements must begin immediately in order to meet required facility construction deadlines; and surrounding property owners require certainty regarding the possible future public use of this parcel; the development of the affected property will be greatly accelerated due to the proposed development. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its adoption by the City Council of the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, this _____ day of _____, 2002.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Overview
Tempe Multipurpose Facility (MPF)
I-10 & Warner

Financial Package

Item	Cardinals/Developer responsibility	City responsibility	Comments
♦ Stadium land	Cardinals pay the cost	--	Cardinals reimbursed from Pool of Stadium Generated Revenue (PSGR*)
♦ Residual property around MPF	Cardinals/developer pay the cost	--	Cardinals reimbursed 20% of cost from PSGR* in return for a 4,000 space parking covenant.
♦ Provide 2,000 space parking lot	Cardinals pay the cost	--	Cardinals reimbursed from PSGR
♦ Parking improvements (est. \$6.6 million)	Cardinals contribute \$7.7 million to improvements	--	Excess over \$6.6 million is deposited to PSGR
♦ Infrastructure & other site-related Improvements (est. \$25.8 million)	--	City initially pays amount through issuance of 15 year bonds	City reimbursed from PSGR
♦ Other structured parking (as site builds out)	Responsibility of developer	City will provide use of GPLET**, and 50% of bed and sales taxes	--
♦ Game-day costs (Cardinals only)	--	City/partners pay annual cost	--
♦ Bond Security Account	Cardinals contribute \$1.0 million to this account	City contributes 100% (includes 50% Cardinals share) of Sales and Bed taxes from retail & hotel development on 27 acres of residual property	When account reaches \$3.0 million, Cardinals are repaid their \$1.0 million on a dollar for dollar basis. After City bonds are fully repaid, account is split 50/50 between the City and the Cardinals.

Other

- ◆ *Pool of Stadium-generated Revenue (PSGR) includes revenue from the following:

- 1.8% local sales tax generated from MPF (tickets, concessions, etc.)
- 1.8% local sales taxes on stadium construction
- Excess revenue from Cardinals \$7.7 million payment
- Net proceeds from a \$4 per ticket facility charge

- ◆ PSGR Order of Payment

- First To the City to repay the \$25.8 million bond for infrastructure and other site-related costs
- Second To repay the Cardinals for ground lease payments through 12/05
- Third To the Cardinals to repay the advance of funds (plus interest) for acquiring the stadium parcel
- Fourth To the Cardinals to repay the advance of funds (plus interest) for acquiring the 2,000 space stadium parking lot parcel
- Fifth Prorata, to the Cardinals in an amount equal to 20% of the imputed purchase price of the residual property (plus interest) in return for recording a 4,000 space shared parking covenant and to the City in an amount equal to 30% of the local sales tax on stadium operations
- Sixth Any remaining amounts to the TSA (31%), Fiesta Bowl (8%), and Cardinals (61%)

1. a. Other Features of MPF Proposal

- ◆ Tempe, TSA, and Cardinals will be jointly responsible for arranging for 18,000 off-site spaces to be available to ticket holders on a free basis; Tempe will provide free shuttle busses for spaces located more than 1 mile from the stadium.
- ◆ Tempe is responsible for operating lots on event days.
- ◆ Tempe provides incentive package for Emerald Center development parcel (e.g., full GPLET, 50% of bed and sales tax to help pay for structured parking).
- ◆ Tempe agrees to hold title to undeveloped property to minimize property taxes.
- ◆ TSA holds the deed to the stadium parcel. Tempe has a reversionary right at the time the parcel is no longer used for a stadium; Cardinals hold an option to purchase for \$1 until fully reimbursed for advance of acquisition funding, then to purchase a 50% interest for \$1.
- ◆ Tempe agrees that stadium is not subject to local zoning regulations.
- ◆ Tempe agrees to a process that will assure expedited plan review and building permit issuance thereby facilitating completion in 2005.
- ◆ Tempe will explore the possibility of waiving development/impact fees.
- ◆ Tempe will cooperate in approving a sign package for the stadium similar to those for BOB and AWA.
- ◆ Tempe will support height waivers for office buildings that are consistent with the height of the stadium.

- ◆ Tempe will cooperate in exploring the availability of using the ADOT culvert for storm water drainage from the site.
- ◆ Tempe will use its best efforts to have other East Valley communities fund an amount equal to stadium operating costs on Cardinals game days.

** Government Property Lease Excise Tax

TEMPE/CARDINALS MEMORANDUM OF UNDERSTANDING

This Tempe/Cardinals Memorandum of Understanding (the "MOU") is entered into by and between B&B Holdings, Inc., an Arizona corporation, d/b/a Arizona Cardinals ("the Cardinals") and the City of Tempe, an Arizona municipal corporation ("Tempe").

RECITALS

A. The Tourism and Sports Authority ("TSA") is considering locating a multi-purpose facility to accommodate professional football and other civic, cultural, and sporting events ("Facility") at the Emerald Center, which is located within Tempe's municipal boundaries.

B. If the Facility is located in Tempe, the Cardinals plan to purchase/lease from Emerald Holdings, LLC approximately 98 acres in the Emerald Center (the "Property") as generally depicted on Exhibit A. Approximately 25 acres of the Property will be used for the Facility ("Facility Property"), approximately 17 acres will be used for 2,000 parking spaces and as a construction staging area ("Parking Property") and the remainder (the "Residual Property") is proposed to be the site of other future development.

C. Tempe desires to have the Facility located within its boundaries in order to retain the Cardinals and the Fiesta Bowl, as well as to attract future Super Bowls and other activities and events to the Facility.

D. The parties acknowledge that in order for the Cardinals to assume the various obligations as identified in this MOU, various public benefits will be provided by Tempe associated with the future development of the Property.

AGREEMENT

1. Property Acquisition. The Cardinals shall acquire the Property from Emerald Holdings, LLC on or before December 1, 2002. The Facility Property will be acquired in fee for approximately \$10.9 million and contributed to the TSA with a reversionary right as described in Section 9. The Parking Property will be ground leased through 2005, and on January 1, 2006 the Cardinals may acquire such land in fee. The Residual Property (and the Parking Property if it is not acquired in fee) will be acquired pursuant to a 99-year ground lease.

2. Infrastructure Costs. Tempe shall issue 15-year bonds at a fixed interest rate with interest only during the first two years to pay for the infrastructure and other site-related costs described on Exhibit B, in the amount of \$25.8 million, pursuant to a final infrastructure plan approved by the Cardinals and the TSA.

3. Parking Improvements. Cardinals shall contribute \$7.7 million to Tempe on or before January 31, 2005 to be used for improvements for 6,000 surface parking spaces. The

projected cost for such improvements is \$6.6 million; the excess shall comprise a portion of the PSGR fund described in Section 4.

4. Pool of Stadium Generated Revenue. The parties will establish a Pool of Stadium Generated Revenue ("PSGR") comprised of (i) the excess amount described in Section 3, (ii) Tempe's transaction privilege and use tax derived from Facility (and related parking and infrastructure) construction; (iii) Tempe's transaction privilege and use tax derived from Facility operations, and (iv) the net proceeds (after deducting operating costs and amounts paid for off-site parking pursuant to Section 6) derived from a fee collected by the Cardinals, the Fiesta Bowl and the TSA (as applicable) as follows: \$4 (increasing at 4% per annum until such time as the Section 2 bonds are fully repaid and thereafter at such rate up to 4% per annum as the Cardinals shall determine) per ticket for events with projected attendance of more than 18,000; \$2 (increasing at 4% per annum until such time as the Section 2 bonds are fully repaid and thereafter at such rate up to 4% per annum as the Cardinals shall determine) per ticket for events with projected attendance of 6,000 to 18,000; and no surcharge for events with projected attendance of less than 6,000.

5. Distribution of PSGR Funds. The PSGR funds shall be distributed as follows:

First, to Tempe to make the payments required to pay the annual debt service on the bonds described in Section 2;

Second, to the Cardinals to repay the cost (plus interest) of ground lease payments through December 2005;

Third, to the Cardinals to repay the cost (plus interest) of acquiring the Facility Property;

Fourth, to the Cardinals to repay the cost (plus interest) of acquiring the Parking Property (if the Cardinals elects to acquire the fee);

Fifth, pro rata, to the Cardinals an amount equal to 20% of the imputed purchase price of the remainder of the Site (plus interest from January 1, 2006) and to Tempe an amount equal to 30% of Tempe transaction privilege tax derived from Facility operations; and

Sixth, the remainder, pro rata, to the TSA (31%), the Cardinals (61%) and the Fiesta Bowl (8%).

The definitive agreements contemplated hereunder will include a provision to the effect that, in the event the Cardinals breach the covenant in the Cardinals/TSA Use Agreement requiring that Cardinals home games be played at the Facility, Tempe will be entitled to liquidated damages in an amount equal to the then unpaid balance of the bonds.

Additional security for the bonds described in Section 2 will be provided as follows. The local share of the sales tax on the construction and operation of any development and the local share of the bed tax that occurs on that portion of the Residual Property identified as Area A on Exhibit C will be placed in a separate bond security escrow account ("Bond Security Account").

If in any year there are insufficient funds in the PSGR to fully fund that year's debt service on the Section 2 bonds, Tempe shall have the right to withdraw the necessary money from the Bond Security Account to make up the difference. At the end of the 15-year term of the bonds when they have been fully repaid, any amounts remaining in the Bond Security Account will be distributed in equal shares to Tempe and the Cardinals. For the remainder of the 30-year term of the Cardinals Use Agreement, Tempe and the Cardinals will share 50-50 in the local sales tax and local bed tax from development on the Residual Property.

In addition, on September 30, 2005, the Cardinals will deposit \$1 million into the Bond Security Account. Once the Bond Security Account has a balance of \$3 million (including the \$1 million Cardinals deposit), then for each additional dollar of such taxes that are deposited into the Bond Security Account a dollar of the Cardinals deposit will be refunded until such time as the entire \$1 million has been refunded.

6. Off-site Parking. The parties and the TSA will be jointly responsible for arranging for up to 18,000 off-site parking spaces to be available (when anticipated event attendance requires such spaces) without charge to event ticket holders. Tempe will provide shuttle bus service for spaces more than one mile from the Facility. Tempe may use a portion of the net parking revenues (as agreed by the parties) associated with off-site parking to pay operational costs (including payments to owners) of such lots.

7. Shared Parking Covenant. Such portion of the Residual Property shall be encumbered by a shared parking covenant as is necessary to make 4,000 spaces available for Facility event use during weeknights, weekends and holidays.

8. Public Benefit Exchange Program.

a. Tax Abatement and Government Property Lease Excise Tax. The provisions of A.R.S. § 42-6202 et seq. (the government property lease excise tax statutes) ("GPLET") shall apply to the Residual Property improvements. Tempe shall cooperate and take all affirmative actions necessary to bring about the full benefit of GPLET and related abatement to the improvements on the Residual Property. Taxes applicable to the improvements under GPLET shall be abated to the full extent allowed by such statutes for each improvement on the Residual Property for the maximum period allowed by such statutes from the time each improvement is placed on the rolls of the Maricopa County Assessor's Office. Upon the expiration of the GPLET tax abatement, the improvements shall be subject to applicable GPLET tax rate provisions. Beginning with the first year the first building constructed on the Residual Property receives the tax abatement described hereinabove and continuing until such abatement is no longer applicable to that building, the Cardinals shall cause the developer to make a \$150,000 per year aggregate payment to be allocated by Tempe to the applicable local school district(s).

b. Residual Property Sales Tax. Fifty percent (50%) of Tempe's transaction privilege and use tax on the construction and operation of any development on that portion of the Residual Property identified as Area B on Exhibit C shall be rebated to the developer.

9. Reversionary Interest. Tempe will have a reversionary right to the Facility Parcel and the Parking Parcel at such time as the Facility is no longer in use (to be further defined). The

Cardinals will have an option to purchase such parcels for \$1 until the Cardinals has been repaid its costs as described in Third and Fourth in Section 5; thereafter, such option will be to purchase a 50% interest for \$1.

10. Training Facility Lease. Upon execution of this MOU, the term of the Cardinals training facility lease shall be deemed extended to coincide with the term of the Cardinals/TSA Use Agreement. Upon payment by the Cardinals of the amount specified in Section 3, the term of the training facility lease will be extended to 99 years and the rent shall be reduced to zero.

11. Zoning. Tempe agrees that the Facility (so long as it is operated by the TSA as a multipurpose facility) and related surface parking is not subject to Tempe zoning ordinances/regulations.

12. Expedited Plan Review. Tempe will implement a process (including contracting for a third-party plan review) for expedited review and building permit issuance in order to facilitate completion of construction in 2005.

13. Impact Fees. Tempe will explore the possibility of waiving development/impact fees.

14. Signs. Tempe will cooperate in approving a sign package for the Facility and surrounding development similar to those at Bank One Ballpark and America West Arena.

15. Height Limitation. Tempe will support height limitation waivers for office buildings consistent with the height of the Facility.

16. Storm Water Drainage. Tempe will explore the availability of using the ADOT culvert for storm water drainage from the Site.

17. Game Day Costs. Tempe will be responsible for the Cardinals game day operating costs, which Tempe intends to fund through cost sharing arrangements with other East Valley communities.

18. Right to Assign or Joint Venture. The Cardinals shall have the right to assign the rights and obligations under this MOU and any subsequent agreement or parts thereof (including the development agreement) to one or more assignees subject to the reasonable approval of Tempe. The Cardinals shall have the right to enter into a joint venture or other business structure with other individuals or entities, subject to the reasonable approval of Tempe.

19. Binding Agreements; Contingencies. The parties contemplate that the provisions hereof will be incorporated into a more definitive development agreement (and possibly additional agreements). Until such more definitive agreements are executed, this MOU will be binding on the parties; provided, however, this MOU (other than the immediate extension of the training facility lease as provided in Section 10 hereof) is contingent upon: (i) the Cardinals entering into a binding agreement with Emerald Holdings, LLC (and satisfying or waiving all contingencies therein); (ii) the TSA designating Emerald Center as the primary site for the

Facility on or before August 15, 2002; and (iii) the parties and the TSA entering into those agreements required by HB 2177 on or before September 12, 2002.

TEMPE:

CITY OF TEMPE, ARIZONA,
a municipal corporation

By: _____
Neil G. Giuliano, Mayor

Date: _____

Attest:

Kathy Matz, City Clerk

APPROVED AS TO FORM AND AUTHORITY

The foregoing MOU has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Tempe.

C. Brad Woodford
Attorney for City of Tempe

CARDINALS:

B&B HOLDINGS, INC., an Arizona corporation,
d/b/a Arizona Cardinals

By: _____
William V. Bidwill, President

Date: _____

Interstate 10

97 Acres

Proposed Fitness Center

Service

Target Corporation

Priest Dr.

CARDINALS

STYNGENS

Warner Rd.

Exhibit "A"

08/01/02

0' 100' 200' 400'
Scale



EXHIBIT B

Emerald Center

Proposal for funding land, infrastructure and parking

\$ 25,774,340

Costs	Units	\$/unit	Total	Notes
Land acquisition			\$ -	
Stadium site	25	acres		Cardinal Responsibility
2,000 parking spaces	17	acres		Cardinal Responsibility
Shared parking covenant on remainder of Emerald Center	56	acres		Cardinal Responsibility
Site Demolition			\$ 950,000	
Demo Road and Landscape			\$ 200,000	
Removal of 300,000 yards of material			\$ 750,000	
Relocate El Paso Gas line			Not Applicable	
Interior Streets			\$ 1,242,340	
Main Road 3" AC on 8" ABC			\$ 527,400	
Curb and Gutter			\$ 95,040	
Street Lights (relocate existing)			\$ 40,000	
Relocate Fire Hydrants			\$ 17,100	
Utility Relocation			\$ 211,200	
Sidewalks			\$ 81,600	
Landscaping			\$ 270,000	
Plaza			\$ 8,000,000	\$ 8,000,000
Site Improvements			\$ 6,636,700	Funded from Cardinals Training Facility prelease
Site Grading			\$ 310,000	
2000 dedicated parking stalls	2,000	\$ 1,200.00	\$ 2,400,000	
4000 temporary parking stalls	4,000	\$ 900.00	\$ 3,600,000	
Landscape retention basins			\$ 326,700	
Utilities to Stadium			\$ 3,082,000	
Temporary Water (4")			\$ 2,000	
Temporary Electrical (3000 amps @480V)			\$ 20,000	
Water 12" looped system CL-52 DIP			\$ 256,500	
12" Valve Boxes			\$ 8,100	
New Fire hydrants			\$ 13,800	
Sewer 12" VCP			\$ 237,600	
Sewer 15" VCP			\$ 880,000	
Sewer lift station			\$ 100,000	
Sewer Treatment Capacity			\$ -	
Telco				
Conduit (6 - 4")			\$ 44,200	
Manholes			\$ 16,000	
Up front fee			\$ 160,000	
Storm Drainage (drain site into ADOT Pit)				
15" RGRCP			\$ 172,800	
Manholes			\$ 36,000	
Lift Station			\$ 100,000	
Electrical Service (estimate)			\$ 1,000,000	
Gas Service			\$ 35,000	
Off Site Traffic Improvements			\$ 600,000	
Traffic Impact Analyses			\$ 100,000	
Street Improvements			\$ -	
Additional Traffic Intersection Lights			\$ 500,000	
Freeway Improvements			N/I	

Soft Costs			\$ 11,900,000
Proposal	\$	100,000	
Permitting Costs	\$	2,160,000	
Design (10% of Construction)	\$	1,000,000	
Construction Administration (5% of Construction)	\$	350,000	
Surveying, Testing, and Staking (5% of Construction)	\$	350,000	
Mobilization (2% of Construction)	\$	140,000	
TSA contingency	\$	2,500,000	
Contingency	\$	5,000,000	
Legal Expenses	\$	300,000	
			* To be adjusted as final costs are known

Interstate 10

AREA "B"

Multipurpose Facility

Proposed Fitness Center

Service

Target Corporation

Priest Dr.

CARDINALS

CARDINALS

AREA "A"
27 AC. +/-

Warner Rd.

Residual Property
Exhibit "C"

08/01/02

0' 100' 200' 400'
Scale

